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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,191	10/26/2001	James R. Mault	MJA-22802/03	9028

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EXAMINER

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ART UNIT PAPER NUMBER

2856

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/040,191

Applicant(s)

MAULT ET AL.

Examiner

Tamiko D. Bellamy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-5, 7-10-12, 15-19, 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Mault et al. (2001/0049470).

With respect to claims 1, 15, and 19 Mault et al '470' discloses in Fig. 3A a device 50 for monitoring and recording a users activity comprising a housing 52 adapted to be supported on user's body (pg. 4, par. 0036), a clock 58 (pg. 4, par. 0036), a motion sensor (pg. 4, par. 0033), a first entry means 66 adapted to generate electrical signals (pg. 4, par. 0036), an electronic memory 92 adapted to record said signals of a user's motion (pg. 5, par. 0038), and a means for transferring signals recorded in memory to an external display (pg. 4, pars. 0031, 0032). With respect to the further limitations of claim 15, Mault et al. '470' discloses in Fig. 3A a plurality of entry keys 66, 62 (pg. 4, par. 0036). With respect to the further limitations of claim 19, Mault et

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al. '470' discloses in Fig. 3B a pulse rate sensor 78, and a means to transfer the signals recorded in memory to an external utilization device (pg. 5, par. 0036).

With respect to claim 2, Mault et al. '470' discloses a motion sensor that comprises an accelerometer (pg. 4, par. 0033).

With respect to claim 3, Mault et al. '470' discloses a display 58 of current time (pg. 4, par. 0036).

With respect to claim 4, Mault et al. '470' discloses in Fig. 3B a sensor 78 adapted to interact with a user's body to sense a physiological parameter (pg. 5, par. 0036).

With respect to claim 5, Mault et al. '470' discloses in Fig. 3B a physiological parameter that comprises pulse rate 78 (pg. 5, par. 0036).

With respect to claim 7, Mault et al. '470' discloses in Figs. 3A and 4 one entry means 66 may record the time of consumption (pg. 4, par. 0036), and a second entry means 86 may record the time of occurrence of activities (pg. 4, pars. 0038, 0039).

With respect to claim 8, Mault et al. '470' discloses a strap 14 attached to the housing 10 (pg. 3, par. 0031).

With respect to claim 9, Mault et al. '470' discloses a means 14 securing housing 10 to clothing (pg. 3, par. 0031).

With respect to claim 10, Mault et al. '470' discloses in Fig. 1 a display device 16 (pg. 3, par. 0031).

With respect to claim 11, Mault et al. '470' discloses in Fig. 3A a graphic display device 62, 64 constitutes a personal digital assistant (pg. 4, par. 0036).

With respect to claim 12, Mault et al. '470' discloses a means for communicating signals stored in said memory to a remote computer over the Internet (pg. 4, pars. 0031, 0032).

With respect to claim 16 Mault et al. '470' discloses a plurality of user keys that are associated with a separate activity of the user (pg. 4, par. 0036).

With respect to claim 17, Mault et al. '470' discloses at least one of the user keys is associated with consumption of foods 66 and another of said user entry key associated with exercise activities 86 (pg. 4, pars. 0036, 0039).

With respect to claim 18, Mault et al. '470' discloses in Fig. 3A a strap means 54 for securing the housing to the wrist of a user (pg. 4, par. 0036).

With respect to claim 21, Mault et al. '470' discloses an audio recorder and a microphone supported 68 on the housing (pg. 4, par. 0036).

3. Claims 1, 3-6, 9-14, 19, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Mault et al. (2002/0027164).

With respect to claims 1, 15, and 19, Mault et al. '164' discloses a housing 90, a clock 47 (pg. 6, par. 0073), a motion sensor 45 (pg. 6, par. 0071, pg. 8, par. 0097), a first entry means 92, an electronic memory (pg. 8, par. 0097), and a means 91 for transferring recorded memory to an external user display (pg. 8, par. 0096). With respect to the further limitations of claim 15, Mault et al. '164' discloses in Fig. 9a a plurality of entry keys adapted to generate an electrical signal 95, 96 (pg. 8, 0097). With respect to the further limitations of claim 19, Mault et al. '164' a graphical display adapted to display the current time (pg. 8, par. 0097), and a pulse rate sensor (pg. 8, par. 0008). Mault et al. '164' has admitted prior art that make use of physiological sensors used to detect heart rate and temperature.

With respect to claim 3, Mault et al. '164' discloses a display of the current time (pg. 8, par. 0097).

With respect to claim 4, Mault et al. '164' discloses a sensor adapted to interact with a user's body to sense a physiological parameter (pg. 8, par. 0097).

With respect to claim 5, Mault et al. '164' discloses a physiological parameter that comprises pulse rate (pg. 1, par. 0008). Mault et al. '164' has admitted prior art that make use of physiological sensors used to detect heart rate and temperature.

With respect to claim 6, Mault et al. '164' discloses a physiological parameter that comprises body temperature (pg. 1, par. 0008). Mault et al. '164' has admitted prior art that make use of physiological sensors used to detect heart rate and temperature.

With respect to claim 9, Mault et al. '164' discloses securing the housing to clothing (pg. 8, par. 0096).

With respect to claim 10, Mault et al. '164' discloses a display device adapted to receive signals from memory to generate a graphic display containing indicia setting forth the occurrence of activity events (pg. 6, par. 0077).

With respect to claim 11, Mault et al. '164' discloses graphical display constitutes a personal digital assistant (pg. 6, par. 0077).

With respect to claim 12, Mault et al. '164' discloses a means for communicating signals stored in said memory to a remote computer over the Internet (pg. 8, par. 0097).

With respect to claim 13, Mault et al. '164' discloses a barcode reader 23 supported on the housing and electronics adapted to store signals generated by the barcode reader in memory (pg. 2, par. 0019, pg. 3, par. 0049).

With respect to claim 14, Mault et al. '164' discloses photosensitive means for capturing images and storing them in memory (pg. 3, par. 0043).

With respect to claim 20, Mault et al. '164' discloses in Fig. 9a a camera 92 supported on the housing adapted to capture digital images (pg. 8, par. 0096).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-12, 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Root et al. (6,013,007) in view of Bianco (4,855,942).

With respect to claims 1, 15, and 19, Root et al. discloses in Fig. 1 a device 101 for monitoring and recording a users activity comprising a housing adapted to be supported on user's body (col. 5, lines 1-5), and a means for transferring signals recorded in memory to an external display (col. 6, lines 16-18). Root et al. also discloses a pulse rate sensor 611 (col. 5, line 46), and a means to transfer the signals recorded in memory to an external utilization device (col. 2, lines 36-39). Root et al. lacks the use of a motion sensor, a first entry means adapted to generate electrical signals, an electronic memory adapted to record said signals of users motion, and a plurality of entry keys. Bianco discloses a clock 37 (col.6, line 33), a motion sensor 17 (col. 6, line 55-66), a first entry means adapted to generate electrical signals (col. 14, lines 51-57), and an electronic memory adapted to record said signals of users motion (col. 6, lines 26-30). Bianco

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also discloses in Fig. 2 a plurality of entry keys 33-36 (col. 11, lines 25-56). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify Root et al. according to the teachings of Bianco to include to include a clock to provide the user with current time, a motion sensor for the purpose of providing a signal to the user to maintain a particular speed, a first entry means to determine the number of calories consumed, an electronic memory to store the users data, and a plurality of entry keys for the purpose of providing a entry keys sending signals with a different functionality.

With respect to claim 2, Root et al. lacks the detail of a motion sensor that comprises an accelerometer. Root et al. also makes use of a receiver module 604 that has the capability of determining speed (col. 7, lines 41-46). However, Bianco discloses a motion sensor 17 that comprises an accelerometer (col. 11, lines 10-24, col. 15, lines 7-12). Bianco makes use of a piezoelectric crystal 17 to determine a particular speed of the user (col.6, lines 55-64). One with ordinary skill in the art knows that piezoelectric materials are used as a form of accelerometers.

With respect to claim 3, Root lacks the detail of displaying of the current time. Bianco discloses a display 16 of current time (col. 6, line 53).

With respect to claim 4, Root et al. discloses a sensor 611 adapted to interact with a user's body to sense a physiological parameter (col. 2, lines 16-20, col.5, lines 45-46).

With respect to claim 5, Root et al. discloses a physiological parameter that comprises pulse rate 611 (col. 2, lines 16-20, col.5, lines 45-46).

With respect to claim 6, Root et al. physiological parameter comprises body temperature 612 (col. 2, lines 16-20, col.5, lines 45-46).

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With respect to claim 7, Root et al. discloses a second entry means 103 may record the time of occurrence of activities (col. 7, lines 24, 25; 40-49). Root et al. lacks the detail of one entry means may record the time of consumption. Bianco discloses one entry means 103 may record the time of consumption (col. 14, lines 3-8, 42-57). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify Root et al. according to the teachings of Bianco to include one entry means to record the time of consumption for the purpose of providing the user with a health fitness aid that is capable calculating the amount of calories consumed over a period of time.

With respect to claims 8 and 18, Root et al. discloses a strap 302 attached to the housing 10 (col. 5, lines 1-4). Root et al. makes use of attaching the device to the upper arm by use of a strap 302. As on of ordinary skill in the art knows the methods in which Root et al. uses is capable of attaching the device to the wrist as claimed. Bianco discloses in Fig. 2 a strap means 32, for securing the housing to the wrist of a user (col. 8, lines 23-25). With respect to further limitations of claim 18, Bianco discloses the display supported on the housing displays current time 37 and information related to signals stored in memory (col.6, line 33). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify Root et al. according to the teachings of Bianco to include a display displaying the current time and information related to signals stored in memory for the purpose of providing a fitness device that is capable retrieving data of the users activity over a period of time and providing the user the option to view the stored data activity at their convenience.

With respect to claim 9, Root et al. discloses a means securing housing to clothing (col. 5, lines 1-4).

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organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

Tamiko Bellamy

T.B.

October 22, 2002



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